

Commentary: Appellate Court Cases

Mozes v. Mozes, 239 F.3d 1067 (9th Cir. 2001)

Other Ninth Circuit Cases

In re A.L.C.,
607 Fed. App'x 658 (9th Cir. 2015)

E.R.S.C. v. Carlwig (in re A.L.C.),
607 Fed. App'x 658 (9th Cir. 2015)

Margain v. Ruiz-Bours,
592 Fed. App'x 619 (9th Cir. 2015)

Murphy v. Sloan,
764 F.3d 1144 (9th Cir. 2014)

Valenzuela v. Michel,
736 F.3d 1173 (9th Cir. 2013)

Cuellar v. Joyce (Cuellar II),
603 F.3d 1142 (9th Cir. 2010)

Cuellar v. Joyce (Cuellar I),
596 F.3d 505 (9th Cir. 2010)

Asvesta v. Petroutsas,
580 F.3d 1000 (9th Cir. 2009)

In re B. Del C.S.B.,
559 F.3d 999 (9th Cir. 2009)

Papakosmas v. Papakosmas,
483 F.3d 617 (9th Cir. 2007)

Von Kennel Gaudin v. Remis (Gaudin III),
415 F.3d 1028 (9th Cir. 2005)

Holder v. Holder (Holder II),
392 F.3d 1009 (9th Cir. 2004)

Von Kennel Gaudin v. Remis (Gaudin II),
379 F.3d 631 (9th Cir. 2004)

Holder v. Holder (Holder I),
305 F.3d 854 (9th Cir. 2002)

Von Kennel Gaudin v. Remis (Gaudin I),
282 F.3d 1178 (9th Cir. 2002)

Gonzalez-Caballero v. Mena,
251 F.3d 789 (9th Cir. 2001)

Shalit v. Coppe,
182 F.3d 1124 (9th Cir. 1999)

Habitual Residence

Mozes remains the most-followed case for determining habitual residence and stands out as the most-cited circuit case dealing with the 1980 Convention.

Facts

The case involved a mother who moved from Israel to Beverly Hills with the parties' four children for a period of fifteen months so that the children could be exposed to an "American experience." Father agreed to the move, but the parents disagreed as to what would occur after the expiration of the fifteen-month period.

Discussion

The opinion focuses on the general principle that one may not acquire a new habitual residence unless there is a mutual intent to abandon the old one:

While the decision to alter a child's habitual residence depends on the settled intention of the parents, they cannot accomplish this transformation by wishful thinking alone. First, it requires an actual "change in geography." *Friedrich*, 983 F.2d at 1402. Second, home isn't built in a day. It requires the passage of "[a]n appreciable period of time," *C v S* (minor: abduction: illegitimate child), [1990] 2 All E.R. 961, 965 (Eng.H.L.), one that is "sufficient for acclimatization." *Feder*, 63 F.3d at 224.¹

On the question of acclimatization, the court observed,

Despite the superficial appeal of focusing primarily on the child's contacts in the new country, however, we conclude that, in the absence of settled parental intent, courts

1. *Mozes v. Mozes*, 239 F.3d 1067, 1078 (9th Cir. 2001).

should be slow to infer from such contacts that an earlier habitual residence has been abandoned.²

The *Mozes* opinion found the Sixth Circuit's test for determining habitual residence unduly broad ("focus on the child, not the parents"³) and also concluded that the court improperly disregarded parental intent.

The Third, Sixth, and Eighth Circuits' holdings regarding the issue of habitual residence all, to some extent, contradict the holding in *Mozes*. Those circuits focus on an analysis of the facts and circumstances surrounding the child's existence in the particular place in question.⁴

2. *Id.* at 1079.

3. *Friedrich v. Friedrich (Friedrich I)*, 983 F.2d at 1401.

4. See *Feder v. Evans-Feder*, 63 F.3d 217, 222 (3d Cir. 1995); *Karkkainen v. Kovalchuk*, 445 F.3d 280 (3d Cir. 2006); *Friedrich I*, 983 F.2d 1396 (6th Cir. 1993); and *Silverman v. Silverman (Silverman II)*, 338 F.3d 886 (8th Cir. 2003).